See No. 3388

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

Nos. 20785, 21377

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Appellants,

v.

HOWARD W. HABERMEYER, THOMAS M. HEALY, and A. E. LYON, individually and as members of the Railroad Retirement Board, et al., *Appellees.*

Appeals From the United States District Court for the Northern District of California, Southern Division

BRIEF OF AMICUS CURIAE RAILWAY LABOR EXECUTIVES' ASSOCIATION

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BRIEF OF AMICUS CURIAE RAILWAY LABOR EXECUTIVES' ASSOCIATION

INTRODUCTORY STATEMENT

The Railway Labor Executives' Association is an association consisting of the chief executive officers of twenty-two standard railway labor organizations. These twenty-two labor unions represent almost all the employees in the railroad industry, including the employees involved in

the decision of the Railroad Retirement Board (herein referred to as the "Board") which is the subject of these appeals.

We have examined the briefs of the parties in the District Court and the brief of the appellants in this Court. We assume that the brief of the Board in this Court will make substantially the same arguments as were made in the District Court; upon that assumption we believe that the Board fully disproves all the contentions of the appellants, although if the Board prevails only on one of the issues relating to the appellants' right or standing to seek judicial review of the Board's determination, the Court need not reach the appellants' contention with respect to the merits of the Board's determination.

The Railway Labor Executives' Association drafted and sponsored the original Railroad Unemployment Insurance Act (herein referred to as the "Act") and most of the amendments to that Act, and participated actively in all Congressional hearings on all proposed amendments to that Act. Although we believe that the Board has established that the decision below was proper, we believe that we are in a position to cast additional light on some of the issues involved; with respect to the remaining issues we rely upon the brief which we assume the Board will file.

SUMMARY OF ARGUMENT

1. The District Court found that under the provisions of the Railroad Unemployment Insurance Act a carrier is precluded from seeking judicial review of a determination by the Board granting unemployment benefits to employees. Accordingly, it held that appellants' complaint, seeking to review the Board's decision granting benefits to C-6 firemen (helpers), must be dismissed on the ground that the Court lacked jurisdiction over the subject matter.

The Court's holding is supported: (1) by the express terms of the Act which set forth precisely the extent and

subject matter of review available to a carrier from a Board determination, which does not extend to review of a decision of the Board granting benefits to employees; (2) by the relevant legislative history; and (3) by the only other case in which the issue was the subject of judicial decision.

2. Even if the appellants had standing to seek to review a determination of the Board that unemployment benefits should be paid, the Board's interpretation of the Act was a reasonable exercise of its discretion which, under well-settled principles, must be sustained. The Board's determination was, under the circumstances, a permissable interpretation and application of the Act.

ARGUMENT

I. The Act Does Not Permit Appellants To Challenge the Award of Benefits by the Railroad Retirement Board; on the Contrary, It Precludes Review of Such Determinations at the Instance of Carriers

The District Court's primary ground for dismissing the complaint was that the appellants are precluded from seeking judicial review of the determination of the Railroad Retirement Board that unemployment insurance benefits should be paid to C-6 firemen (helpers) who chose to receive severance pay rather than an offer of "comparable" employment with the railroads in accordance with the option given such employees under Section II, C (6) of the Award of Arbitration Board No. 282. The District Court's determination is supported by the language of the Railroad Unemployment Insurance Act, by the relevant legislative history, and by judicial interpretation of the Act in the only case known in which the issue was raised prior hereto.

Section 5(b) of the Act (45 U.S.C. § 355(b)) directs the Board to make findings of fact and decisions on claims for benefits. Section 5(c) provides for appeals and review within the Board. The right to such procedures

is confined to two areas. The first area provides that an employee whose claim for unemployment benefits is initially denied may appeal such determination. The second area provides that an employer who disputes a Board finding that it is an "employer" within the meaning of the Act or that it is liable for "contributions" has a right to a review of such determination. No other determination of the Board is made subject to review. Section 5(c) concludes:

> "Any issue determinable pursant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursant to this subsection and subsection (f)."

Subsection (f) provides the method of judicial review of Board decisions that are subject to review, by petition for review filed in an appropriate Court of Appeals, after which the Board is required to file a transcript of the record with the Court. The subsection recites that judicial review of Board determinations is limited to decisions made under subsection (c), namely, employee appeals from determinations denying the granting of benefits, and employer appeals from determinations establishing employer status. Subsection (g) provides:

> "Findings of fact and conclusions of law of the Board in the determination of any claim for benefits . . . shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons . . . and shall not be subject to review in any manner other than that set forth in subsection (f) of this section."

It is difficult to conceive of language more explicitly denying judicial review other than pursuant to subsection (f). But the review procedures permit the carrier to seek review on matters pertaining only to the question of whether they are "employers" under the Act, and do not permit the carrier to seek review of a determination

on a claim for benefits unless such determination involves the question of employer status under the Act. These provisions were carefully drawn to give only the employee or his railway labor organization the right to contest a determination on a benefit claim not involving a question of employer coverage. We so intended it, the carriers so understood it, and Congress so understood it and enacted it. The carriers did not like it, and complained to Congress, but that is the way Congress enacted it. At the hearings on the original bill the Association of American Railroads testified at considerable length in opposition. One of its spokesmen complained that while the bill provided for appeals by employees on claims for benefits "there is no appeal provided anywhere in this bill for the railroads which pay the freight."[1] But Congress did not change the provisions.

Furthermore, the Railroad Retirement Act (45 U. S. C. § 228) has been amended to adopt the judicial review provisions of the Railroad Unemployment Insurance Act, and there is further evidence that Congress understood and adopted our view that the carriers had and should have no standing to challenge the Board's decision on a claim for benefits or annuities. Sec. 11; 45 U. S. C. § 228 (k). In the course of hearings in 1945 on a number of amendments to the Retirement Act which we drafted and proposed and which Congress enacted, including an amendment to provided judicial review initially in the then Circuit Courts of Appeals instead of in the District Courts as theretofore, there occurred the following:[2]

> "Mr. O'Hara: Now, is it true also that practically all of these appeals would be on the part of the employees? . . . I understand that the employer generally is not concerned as to what the decision of the Board

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1 *Hearings* before the Senate Committee on Interstate Commerce on S. 3772, 75th Cong., 3rd Sess., June 3-9, 1938, p. 125.

2 *Hearings* before the House Committee on Interstate and Foreign Commerce on H. R. 1362, 79th., Cong., 1st Sess., April 18-26, 1945, p. 1091.

> is. I suppose that the only question that they might appeal on is whether so and so is an employee of the railroad. That is what they are interested in. I would think that that would be the only case.
>
> Mr. Schoene: And it is a question of whether the employing unit is an employer?
>
> Mr. O'Hara: That is right.
>
> Mr. Schoene: In point of fact, I think that probably . . . a fair number of employers have appealed to the courts from status determinations; that is, from coverage decisions . . .
>
> Mr. O'Hara: On that question?
>
> Mr. Schoene: On that question. Of course the employer would not have an appealable interest in the question of what the amount of annuity of an individual would be or, for that matter, as to whether the particular individual is entitled to an annuity at all."

At the same hearings a spokesman for the carriers, in opposing a proposed amendment, which Congress enacted, which provided for a disability annuity based in part on disability of an employee for work in his regular occupation, stated: "Characteristically, the employer is left no voice in the matter." P. 556. And later the same witness referred to possible Board decisions granting such annuities as "unreviewable". P. 559.

It is thus perfectly plain that the Railway Labor Executives' Association, which drafted the legislation, and Congress, which enacted it, understood it to preclude judicial review, at the behest of an employer, of a determination of the Board that payments were or were not due to an employee. And as we have seen above, the carriers also so understood the provisions, and complained, but their complaints were unavailing. The Act has so remained since 1938.

Finally, in the only case in which the issue of the right of a carrier to seek judicial review of a determination by

the Board granting a claim for benefits was submitted for adjudication by a court, the court emphatically held that such review is precluded by the Act.

In *Railway Express Agency* v. *Kennedy,* 95 F. Supp. 788 (N.D. Ill., 1950), *affirmed* 189 F. 2d 801 (7th Cir. 1951), *cert. den.* 342 U.S. 830 (1951), the carrier filed suit to enjoin the Board from paying unemployment insurance benefits to its employees under certain circumstances. The basis of the carrier's contention was that the employees were disqualified for unemployment benefits by reason of Section 4 (a-2) (iii) of the Act (45 U.S.C. § 354 (a-2) (iii)). The carrier argued that the Board's determination that such employees were entitled to benefits was not in accordance with the Act and that the Board should be enjoined from making any further payments to such employees.

The District Court never reached the merits of the Board's determination. The District Court found that, for five separate reasons, the carrier's complaint should be dismissed without reaching the merits.

First, the District Court found that although the complaint named as defendants the members of the Board, individually and as members of the Board, the suit was in effect against an agency of the United States, which had not consented to such action, and which had not waived its right of immunity to be sued.

Second, the Court held that the unemployment fund is in the nature of "security taxes" for the benefit of employees, and as such, the United States is the owner of the fund, accountable only to the Congress, and the carrier had no pecuniary interest therein.

Third, the Court found that the Act requires the Board to determine the right of employees to receive unemployment benefits and such determination having been made, it is conclusive with the right of appeal under the Act

available only to objecting employees who have been denied benefits.

Fourth, the Court determined that there exists no statutory right in a carrier to object to or contest the findings and decisions of the Board granting benefits, even though they be incorrect. To hold otherwise, the Court stated, would delay prompt unemployment payments and render orderly administrative procedure impossible.

Fifth, the Court held that since the carrier's complaint sought to affect the employees' right to receive unemployment benefits, as found by the Board, such employees were indispensable parties to the action regardless of whether, as the carrier contended, the issue is one of law. The carrier's failure to join such parties was held to be additional ground for dismissing the complaint.

The first four grounds set forth by the District Court related to the jurisdiction of the Court to grant judicial review of a determination by the Board granting employees benefits and to the standing of a carrier to challenge such a determination by the Board. The Court held that it did not have jurisdiction to grant such review. These grounds, of course, are directly in point in this case. The fifth ground also is applicable here.

This Court set forth the criteria for determining whether a party is indispensable in the oft-cited case of *State of Washington* v. *United States,* 87 F. 2d 421, 427-428 (9th Cir. 1936). The test was based on four questions:

> "(1) Is the interest of the absent party distinct and severable?
>
> "(2) In the absence of such party, can the court render justice between the parties before it?
>
> "(3) Will the decree made in the absence of such party have no injurious effect on the interest of such absent party?

> "(4) Will the final determination, in the absence of such party, be consistent with equity and good conscience?"

The Court stated that if any of the questions must be answered in the negative, the absent party was indispensable. Certainly, the third and fourth questions, at least, must be answered in the negative in this case. The appellants challenge the right of C-6 firemen (helpers) to receive benefits to which the Board has held them entitled. A judgment in favor of appellants would have resulted in an injunction against the Board, enjoining continued payments to such employees. To contend, as do the appellants (Brief, pp. 57-61), that the rights of C-6 firemen (helpers) would not be adversely affected by the judgment of the Court simply is untenable. Accordingly, here too, as in the *Kennedy* case, the failure of the appellants to join the employees involved is a failure to join indispensable parties and further ground for dismissal of the complaint. The fact that it may be difficult or even impossible to join them makes them no less indispensable. As this Court concluded in the *State of Washington* case (87 F. 2d at 428):

> "[T]he nonjoinder of an indispensable party is fatal error, and the court cannot proceed to a decree in the absence of such indispensable party, notwithstanding the fact that the joinder would oust the court of jurisdiction."

See also *Provident Tradesmen's Bank & Trust Co.* v. *Lumberman's Mutual Casualty Co.,* 365 F. 2d 802 (3d Cir. 1966); *Stevens* v. *Loomis,* 334 F. 2d 775 (1st Cir. 1964).

The Court of Appeals for the Seventh Circuit, in affirming the decision of the District Court, did so specifically on three of the five grounds. Primarily, the Court of Appeals based its decision on the ground that a review of the Act and its legislative history established that Congress did not intend to give a carrier the right to review of a Board

determination granting benefits to employees. The Court stated (189 F. 2d at 804):

> "A careful consideration of all these sections of the Act convinces us that Congress intended to grant a judicial review of the decisions of the Board on claims for compensation where the employee status was not denied by the carrier, only to employees whose claims to compensation have been disallowed in whole or in part."

This excerpt from the opinion of the Court of Appeals expresses the core of the position of the Railway Labor Executives' Association, and the core of the decision of the District Court in this case. The appellants' brief devotes a footnote to it, on page 55.

The Court in *Kennedy,* emphasized its holding in its response to a contention that the carrier was entitled to judicial review pursuant to the Administrative Procedure Act. The Court stated (*ibid.*):

> "*Since the Railroad Unemployment Insurance Act does preclude judicial review of the decision of the Board in the instant case on the petition of a carrier,* it follows that the carrier is given no right to such judicial review by the Administrative Procedure Act." (Emphasis added.)

The Court thereafter determined that even assuming, *arguendo,* that the Act did not preclude the judicial review sought by the carrier, the carrier nevertheless did not have standing to sue for two additional reasons. First, because the contributions paid by the carrier constituted a type of tax and a taxpayer of federal taxes does not have standing to sue to prevent the expenditure of federal funds by the agency authorized by the statute to expend such funds. Second, in order to have standing to sue, the carrier is required to show that the alleged unlawful activity by the administrative body is resulting

in substantial harm, actual or impending, and the carrier could not establish that such was the case.

The appellants contend (Brief, pp. 34-41) that the *Kennedy* decisions were erroneous and should not be followed by this Court. To support their contention they cite a number of cases dealing with the general question of when a party has standing to sue. The brief of the Board adequately and convincingly deals with that contention and we will not attempt to meet that argument in this brief. It should be remembered, however, that the issue in this case of the appellants' standing to challenge the Board's determination granting benefits to C-6 firemen (helpers) is not to be determined merely upon an application of general principles of law. As the Courts in *Kennedy* found, aside from the application of general principles with respect to the issue of standing to sue, the Act clearly prescribes the persons entitled to seek judicial review of determinations of the Board and of the issues subject to judicial review, and the Act precludes judicial review available to a carrier except on the issue of "employer" status. Accordingly, the appellants' discussion of other cases, involving statutory provisions of different enactments and the standing of persons affected by such other legislation to seek review of decisions of the administrative bodies charged with administering such legislation, while perhaps relevant on the general rule concerning standing to sue, is of little or no relevance in the present case in which the applicable statute specifically defines the parties who may seek review of determinations of the Board, and the grounds upon which such review may be sought, and specifically denies the right of review in all other situations.

The appellants further argue (Brief, pp. 41-42) that, even assuming that *Kennedy* was correctly decided, it does not establish a precedent in this case because of what the appellants describe as "overwhelming" factual distinctions. A review of these factual distinctions, how-

ever, shows that they are of no relevant significance and would not have, to any extent, affected the decisions of the courts in *Kennedy*.

The first two distinctions described by the appellants are that in *Kennedy* only one carrier had brought an action to enjoin the Board while in the present case the suit is brought on behalf of 775 "employers" which contribute more than eighty-five percent of all amounts paid into the Account by the carriers; and that while the amount involved in *Kennedy* was slightly more than $28,000, the amount here is more than $2,500,000. There is nothing in either the opinion of the District Court or the Court of Appeals in *Kennedy* to support the proposition that the number of carriers filing a suit to enjoin a determination of the Board, or the amount of money involved, is relevant to determining whether the Act precludes judicial review by a carrier of Board determinations granting benefits to employees. Certainly, the holdings of the Courts, that the express statutory language of the Act precludes an employer from challenging such determinations, render irrelevant either the number of carriers seeking review or the particular sum of money involved.

The third and final alleged relevant distinction between *Kennedy* and this case is that at the time the *Kennedy* decision was rendered the Unemployment Insurance Account had a surplus slightly in excess of $779,000,000 and the rate of contribution by employers was one-half of one percent. Based upon such facts, the appellants argue, the Court of Appeals in *Kennedy* felt the injury of which the carrier complained was only a future possibility. In the present case, however, the appellants conclude, the Account now has a deficit of $250,000,000 and the "injury which the *Kennedy* court found to be 'only a future possibility' has been felt in full measure." The appellants' argument shows that they have misconstrued the Court's holding on this point.

As discussed above, the Court, in *Kennedy,* initially held that carriers are not entitled to judicial review of any decision of the Board granting benefits except decisions relating to employer status. The Court then went on to hold that even assuming, *"arguendo,"* that a carrier was entitled to seek judicial review it would have standing to sue only if it could establish that the harm resulting from the decision of the Board is certain, substantial, and of an immediate nature. The carrier argued before the Court that the decision of the Board would result in harm in that it would lead to a decrease of the Account and possible increase in the percentage amount payable by the carrier. The Court rejected the argument on the ground that since the Account had a large surplus, which would have to be decreased by approximately $350,000,000 before a change in the contribution rate would result, and since the amount involved in the case was relatively small when compared to such surplus, the determination of the Board could not possibly affect the carrier's rate of contribution and the harm complained of was no more than a speculative future possibility.

The rationale of the Court is equally applicable here. As the appellants point out, the Account now is approximately $250,000,000 in arrears. Under the present law, the appellants' rate of contribution to the Account will not be changed until there is a credit in the Account of at least $300,000,000. Section 8 of the Act (45 U.S.C. § 358). Thus, the Account will have to acquire approximately $550,000,000 before there will be any change in the current contributions of appellants. The challenged payments in this case approximate $2,500,000. If none of this amount had been paid, the effect would be that the amount necessary to be added to the Account to lower the current contributions of appellants would be reduced from $550,000,000 to $547,500.000. Obviously, in the overall picture, the amount involved herein is relatively small and the Court's statement in *Kennedy,* that the payment of the claims

there involved would not affect the rate of contributions for the current years and therefore the complaint refers only to a future possibility, remains relevant here.

The appellants' further contention that the Board's payments in this case may result in Congress increasing the rate of contribution by legislative enactment is even more speculative. Whether Congress will or will not change the current contribution rates, and if it does, the reason for such change, is certainly completely conjectural at this time. A number of factors, obviously, determine what action, if any, Congress may take. As noted by the Court of Appeals in *Kennedy* (189 F. 2d at 805):

> "The condition of the fund and the resulting rate of contribution might also be affected by either a general depression or by a general boom in business."

II. The Board's Determination Granting Unemployment Benefits to C-6 Firemen (Helpers) Was a Reasonable Exercise of the Board's Discretion and Must Be Sustained

In the preceding portion of this brief we showed that, upon the basis of the relevant provisions of the Act, its legislative history, and the only case involving the issue, the merits of the Board's determination awarding unemployment benefits to C-6 firemen (helpers) was not subject to judicial review by appellants.

Should the Court nevertheless determine that appellants are entitled to judicial review and proceed to examine the merits of the Board's decision, we submit that the Board's determination must be sustained. The appellants contend that the Board's determination was erroneous for three reasons. First, they argue that the Board erroneously determined that all C-6 firemen (helpers) who chose to receive severance pay in lieu of a comparable job offer had not left work voluntarily without good cause and were not disqualified from receiving benefits under Section 4(a-2)(i) (B) of the Act (45 U.S.C. § 354(a-2)(i)(B)). Second, they argue that the Board erroneously

determined that all such C-6 firemen (helpers) had not failed without good cause to accept suitable work and were not disqualified from receiving benefits under Section 4 (a-2) (ii) of the Act (45 U.S.C. § 354 (a-2)(ii)). Third, they argue that the Board erroneously determined that such C-6 firemen (helpers) were entitled to benefits on an overall basis without making findings with respect to each individual C-6 firemen (helper).

Initially, it must be noted that in order for appellants' position to be sustained, it would be necessary for this Court to find not only that the Board's interpretation of the Act was erroneous, but also, that it was arbitrary and capricious as well.

The standard to be applied by a court in reviewing a determination of an administrative agency was set forth in *Udall* v. *Tallman,* 380 U.S. 1 (1965) wherein the Court stated (at 16):

> "When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.' *Unemployment Comm'n* v. *Aragon,* 329 U.S. 143, 153. See also, e. g., *Gray* v. *Powell,* 314 U.S. 402; *Universal Battery Co.* v. *United* States, 281 U.S. 580, 583."[3]

The Court concluded (at 18):

> "If, therefore, the Secretary's interpretation is not unreasonable, if the language of the orders bears his his construction, we must reverse the decision of the Court of Appeals."

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[3] See also, *Norwegian Nitrogen Products Co.* v. *United States,* 288 U.S. 294, 315 (1933), and *Power Reactor Development Co.* v. *Electrical, Radio & Machine Workers,* 367 U.S. 396, 408 (1961).

The rationale of the Board for each of its interpretations of the Act which have been attacked by appellants shows that the Board's interpretations were reasonable and cogent, and should be left undisturbed.

Thus, Section 4(a-2)(i)(B) of the Act provides that unemployment benefits are not to be paid to any employee who is found to have "left work voluntarily" without "good cause". The Board interpreted the word "work" as referring to the particular *job* performed by the employee. Accordingly, since the option of a C-6 fireman (helper) to accept a carrier's comparable job offer or severance pay arose from the decision of a carrier to *abolish* the job theretofore held by such employee, the Act's exclusionary provision relating to leaving work "voluntarily" obviously had no application. Surely, the Board's interpretation of the statutory language is not so unreasonable as to amount to an arbitrary abuse of discretion.

The appellants contend that the phrase "left work voluntarily" does not refer to the *job* held by the employee but refers to the *employment* of the carrier. Thus, the appellants argue (Brief, pp. 22-23) that since, in each case, the C-6 fireman (helper) was offered continued employment with the carrier (i.e., a comparable job) every C-6 employee who received benefits should be considered to have left employment volutarily.

The appellants argue that the Board's interpretation is untenable since it could lead to a result that an employee would be entitled to unemployment benefits simply because the carrier abolished his job even though the carrier simultaneously with the abolishment of the job offered the employee other employment. Such argument, however, completely ignores Section 4(a-2)(ii) of the Act which deprives an employee of his right to unemployment benefits if he refuses without good cause an offer of "suitable work available." Thus, under the example of the

appellants, although the employee would not be excluded from receiving benefits by virtue of having left work voluntarily, he would be subject to exclusion for having failed to accept suitable work.

The appellants further contend (Brief, p. 26) that Aribitration Board No. 282 recognized that employees refusing comparable job offers would not be entitled to unemployment insurance and that such recognition was the reason for the severance pay allowance. The appellants state:

> "What conceivable purpose could the severance allowance have had except to tide the men over until they were able to find other employment?"

This contention misconceives the basis of the Arbitration Award. Prior to the Arbitration Award, a carrier could not abolish a fireman's (helper's) job without agreement unless it abolished the entire crew. A fireman (helper) assigned to a particular crew had a vested interest in such job which was not subject to termination at the unilateral whim of the carrier. The Award of Arbitration Board No. 282 changed the situation. Pursuant to the Award a carrier was given the right to abolish a job. The quid pro quo for such right, with respect to C-6 firemen (helpers), was that such firemen (helpers) be offered comparable jobs or severance payments. The receipt of such payments by the C-6 firemen (helpers) amounted to additional compensation by the carrier imposed for the right to abolish the employee's vested contractual interest in the job to be abolished. Clearly, the requirement of the severance payment had nothing to do with "tiding the men over" until they found other employment. It was payable no matter how soon they found other employment.

The appellants next argue that even if the Board's determination of Section 4(a-2)(i)(B) was correct the Board nevertheless erred in not determining, on a case by case basis, whether the comparable job offers made by the carriers, and refused by the C-6 employees, amounted to

"suitable work available" which would have the effect of excluding such employees from unemployment compensation under Section 4(a-2)(ii) of the Act. The appellants urge that if it be found that a particular comparable job offer amounted to an offer of "suitable work," an employee who chose instead to receive severance pay should not be eligible to receive unemployment benefits, unless such employee can show "good cause" for having refused such employment.

The Board's reason for holding that no C-6 employee, who elected to receive a severance payment rather than a comparable job, could be considered to have refused suitable employment without good cause within the meaning of Section 4(a-2)(ii), likewise was reasonable and not an abuse of discretion.

As we showed above, the option presented to employees under Section C-6 of the Arbitration Award was in the nature of compensation by the carrier to the employee in return for the carrier obtaining the right to abolish a job to which the employee had a vested interest by reason of his seniority. The Board held that such employee was entitled to make a free choice between the two methods of payment for losing that right (i.e., a comparable job or severance pay) and that a decision to accept severance pay rather than a comparable job could not be considered, under such circumstances, as a refusal without good cause to accept suitable work within the meaning of the Act.

Finally, the appellants contend that the Board erred in making a blanket finding that all C-6 firemen (helpers) were entitled to benefits and in not making individual findings with respect to each of the C-6 employees who filed claims for unemployment benefits. The appellants concede (Brief, p. 21) that the District Court was correct in holding that the Act does not require the Board to make individual findings of fact when the right to benefits to be paid to claimants in a particular category can be determined

by one finding applicable to all members. The appellants state that such conclusion is "unassailable". Their quarral with the District Court is only because of their belief that in the present case the Board erred in holding the disqualification provisions of Section 4(a-2)(i)(B) and (ii) not applicable to C-6 firemen (helpers) who chose to accept severance pay rather than a comparable job. They argue that in applying such provisions individual findings must be made.

Accordingly, if the Court finds, as we believe it must, that the Board's interpretation of the Act holding such provisions inapplicable was well within the sphere of its discretion, then even the appellants must concede that its argument with respect to the failure of the Board to make individual findings must be rejected,—assuming we reach the merits.

CONCLUSION

The appellants make other arguments in support of their position which we have not dealt with in this brief. The brief of the Board fully answers all such arguments and demonstrates their lack of merit. The judgment below should be affirmed.

Respectfully submitted,

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Certificate

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

MILTON KRAMER